IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10923 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAJESH RAVJIBHAI BAROT

Versus

COMMISSIONER OF POLICE

Appearance:

1. Special Civil Application No. 10923 of 2002

MR VB GHARANIYA for Petitioner No. 1

MR ARVIND K THAKUR for Petitioner No. 1

MR VB SHETH Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE C.K.BUCH

Date of decision: 05/05/2003

ORAL JUDGEMENT

In this petition under Article 226 of the

Constitution of India, the petitioner has challenged the legality and validity of the detention order passed by the Police Commissioner, Ahmedabad City dated 12.9.2002 in exercise of powers vested under him by Section 3(2) of the Gujarat Prevention of Anti-Social Activities Act, 1985 (hereinafter referred to as "the PASA Act") branding the petitioner-detenu as bootlegger within the meaning of sec. 2(b) of the PASA Act.

It is submitted by the ld. counsel appearing for the petitioner that according to the grounds of detention served to the detenu-petitioner, the detenu has been detained mainly because he is involved in three different offence punishable under the Bombay Prohibition Act. The table of cases mentioned in the grounds for detention, Annexure-C, page 24, the petitioner has been arrested and prosecuted for three different offences registered with Prohibition POlice Station, North Zone between 30.1.2002 and 9.9.2002. In all the three offences, 20 liters of country liquor was recovered during the investigation of the first offence and on two other occasions, 64 and 72 bottles of India made foreign liquor was found. It is submitted that even for the sake of arguments, if it is accepted that the petitioner is involved in these offences, it cannot be said to be any way prejudicial to the public health or maintenance of public order. One more submission is also made by the ld. counsel for the petitioner that the day on which the petitioner was served with the detention order, he was in judicial custody. There was no need to pass the order of detention as he has not even preferred the bail application before the competent court. In support of his submission, ld. counsel has placed reliance on two different decisions. The first decision is reported in 2002(1) GLH p. 528. Referring to para-7 and 8 of the said decision, it is argued that there was no material before the detaining authority to have some reasonable apprehension about the petitioner to be released on bail. Therefore, considering this fact of the case, according to my opinion, the detaining authority has not applied its mind properly. In view of such non-application of mind on the part of the detaining authority, subjective satisfaction is not established, looking to the facts of the present case. In the same way, the ratio of the decision of the Apex Court reported in AIR 2000 SC p. 3675 also helps the present petitioner. So without going into discussion of other grounds agitated in the memo of petition, I am inclined to allow this petition.

In the result, this petition is allowed. The impugned order of detention dated 12.9.2002 passed by the

Police Commissioner, Ahmedabad city is quashed and set aside. The detenu is hereby ordered to be set at liberty forthwith, if he is not required to be detained in any other case. Rule is made absolute. DS Permitted.

(C.K. BUCH, J.)
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